

The Telecommunications Excise Tax Act imposes a tax on the act or privilege of originating or receiving intrastate or interstate telecommunications by persons in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers by such persons, 35 ILCS 630/3 and 4. (This is a GIL.)

July 14, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated April 19, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

We are consultants to a company operating in Illinois and utilizing interstate private circuits which are supplied by a major long distance carrier ('CARRIER'). On behalf of our client ('COMPANY'), which desires to remain anonymous, we hereby submit a request for a General Information Letter, pursuant to 2 Ill. Admin. Code § 1200.120. We appreciate this guidance on an issue related to the Illinois Telecommunications Excise Tax Act (the 'ACT').

COMPANY is not the subject of an audit by the Department, nor is litigation to which COMPANY is a party pending with the Department.

#### SUMMARY OF ISSUES WITH RESPECT TO WHICH GUIDANCE IS REQUESTED

- (1) Whether the CARRIER's method of allocating inter office channel ('IOC') mileage satisfies the ACT.
- (2) Whether a direct method of allocating IOC mileage would satisfy the ACT.

#### FACTS

COMPANY utilizes interstate private lines that can be characterized as point-to-point circuits (meaning, for purposes of this letter, circuits which have two termination points, as contrasted with multi-point circuits, which have more than two termination points, or 'drops').

For example, COMPANY has a point-to-point circuit with one termination point in Illinois (Point A) and one termination in New York (Point B).

CARRIER follows the usual pattern in the industry in utilizing three pricing components for point-to-point circuits. These components are 1) local

termination point charges for Point A, 2) local point charges for Point B), and 3) interoffice channel ('IOC') charges. A dollar figure is assigned to each component, and the sum of the components makes up the entire monthly charge of the circuit before taxes.

The IOC component of private line service is billed based upon an approximation of the air miles covered by the channel. A circuit which connects two CARRIER central offices is billed based upon the distance between the assigned coordinates of the two central offices.

With respect to interstate private circuits with one termination point in Illinois, CARRIER applies the ACT's Telecommunication Excise tax based upon an apportionment methodology. CARRIER utilizes a miles to the border algorithm to determine the 'Illinois portion' of the IOC. This methodology is based upon an average distance between the CARRIER central office and all the points at which a circuit could exit the state. A miles to the border ('MTB') is assigned for each CARRIER central office. The MTB number does not equal the distance from the central office to a particular state border exit point but an average of the distances to the possible exit points.

In order to apportion the IOC to Illinois, CARRIER applies the following algorithm:

$$\frac{\text{MTB}}{\text{CT or AM}^1} \text{ IOC \$} = \text{Taxable \$}$$

**(1) Whether the CARRIER's method of allocating IOC mileage satisfies the ACT.** The ACT states that the 'gross charges' for a private line service include charges imposed at each channel point within Illinois, and charges for that portion of interstate inter-office channel provided within Illinois.

For purposes of applying ACT, CARRIER includes in gross charges the local termination point charges for Point A, and a portion of the IOC charge. As outlined above, the portion of the IOC charge that is allocated to Illinois is derived from the algorithm which approximates the portion of the IOC in Illinois.

We would appreciate your view on whether CARRIER's method for allocating the portion of the inter-office channel charge provided within Illinois satisfies the ACT.

**(2) Whether a more direct method of allocating IOC mileage would satisfy the ACT.**

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<sup>1</sup> AM=Air miles assigned to each IOC as calculated from tariff coordinates. CT=The sum of the assigned MTB numbers for the two CARRIER central offices connected by the IOC. The denominator of the fraction is either CT or AM. If CT is less than AM, AM is used as the denominator. If CT is greater than AM, CT is used as the denominator.

CARRIER claims to have compiled data on the actual mileage from its central offices (local termination points) in Illinois to each possible exit point at the state's borders. The exit points are at the intersection of CARRIER's circuit's path and the line representing the state border.

The question is whether CARRIER may elect to use the actual miles of the circuit channel as measured from CARRIER central office to the state border for the Illinois portion of the IOC charge.

This method appears to be consistent with a previous General Information Letter (97-0592-GIL), where the Associate Counsel, speaking of the ACT's treatment of interstate inter-office channel charges, stated that 'the tax is apportioned on a distance basis. This apportionment allocates the communications charges subject to the tax based on the ratio of the private line mileage contained in Illinois to the total amount of mileage contained in the private line service.'

Please advise us as to whether this method of apportioning the IOC charge would satisfy the ACT.

Although we cannot, as noted above, provide a binding determination in the context of a General Information Letter, we will provide the following general information for your consideration.

The Telecommunications Excise Tax Act imposes a tax on the act or privilege of originating or receiving intrastate or interstate telecommunications by persons in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers by such persons, 35 ILCS 630/3 and 4. The Act defines gross charges as including amounts paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by retailers, 35 ILCS 630/2(a).

Section 2(c) of the Telecommunications Excise Tax Act, 35 ILCS 630/2, defines "Telecommunications" to include, among other things, private line services, and a "private line" is further defined to mean "a dedicated non-traffic sensitive service for a single customer, that entitles the customer to exclusive or priority use of a communications channel or group of channels, from one or more specified locations to one or more other specified locations."

Concerning the computation of Telecommunications Excise Tax on private line services, 35 ILCS 630/2(a) specifically provides that "gross charges" for private line services shall include "charges imposed at each channel point within this State, charges for the channel mileage between each channel point within this State, and charges for that portion of the interstate inter-office channel provided within Illinois." In general, the tax is imposed upon those portions of a private line which are geographically within the State of Illinois, and any

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mileage from the State border to the first drop point outside Illinois would also be considered mileage subject to the tax.

Regarding computation of the tax by an allocation method that utilizes an algorithmic formula, we do not have sufficient information on this formula to make a determination at this time. If your client would like to have an Illinois Department of Revenue auditor review the accuracy of the formula, please communicate that information to us so that we can make a referral to our Audit Division.

I hope this information is helpful. The Department of Revenue maintains a Web site which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Karl Betz  
Associate Counsel

KB:msk  
Enc.